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Submitted

Judge Clifford

# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

No. ~~328.~~ 129

THE UNITED STATES, PLAINTIFFS IN ERROR,

vs.

CHARLES J. BALLARD, JOSEPH LYMAN, WELLINGTON P. COOKE, AND DAVID B. SEXTON.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

[redacted] Salmon, collector

FILED DECEMBER 5, 1870.

April 3 - 1872

Jas Sampson

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## No. 328.

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vs.

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1 January term, A. D. 1868.

At a stated term of the circuit court of the United States for the northern district of Ohio, begun and held at the city of Cleveland, in said district, on the first Tuesday in January, being the seventh day of that month, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States of America the ninety-second—present, the Honorable Charles T. Sherman, district judge—among the proceedings then and there had, were the following, to wit:

THE UNITED STATES OF AMERICA
*vs.*
CHARLES J. BALLARD, JOSEPH LYMAN, Wellington P. Cooke, & David B. Sexton. } No. 1576.—Debt.

Be it remembered that heretofore, to wit, on the second day of July, in the year of our Lord one thousand eight hundred and sixty-six, came Joseph M. Root, esquire, attorney for the United States for the district aforesaid, and filed in the clerk's office of said court a precipe, in the words and figures following, to wit:

*Precipe.*

Circuit court of the United States of America for the seventh circuit, and northern district of Ohio.

THE UNITED STATES OF AMERICA
*vs.*
CHARLES J. BALLARD, JOSEPH LYMAN, Wellington P. Cooke, & David B. Sexton. } In debt.

Debt, $20,000; damages, 2,000.

Issue summons returnable according to law, and endorse "Suit brought upon def'ts' bond to pl'ff in $20,000, dated April 9, 1861, and conditioned for the true and faithful execution and discharge by def't Ballard, of all the duties of his office of collector of the customs for the district of Cuyahoga and upon the breach of said condition. Sum due in
2 equity, $1,470, and interest thereon from Jan'y 1, 1865."

Cleveland, July 2, 1866.

J. M. ROOT,
*Attorney of U. S.*

F. W. GREEN, Esq.,
*Clerk, &c.*

Whereupon a writ of summons was issued by the clerk of said court, which is in the words and figures following, to wit:

*Summons.*

THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss:*

The President of the United States of America to the marshal of the northern district of Ohio, greeting:

You are hereby commanded to summon Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, and David B. Sexton, if they be found in your district, to be and appear in the circuit court of the United States

for the northern district of Ohio aforesaid, at Cleveland, on the sixteenth (16th) day of July instant, to answer unto the United States of America of a plea of debt—debt, twenty thousand dollars, ($20,000,)—and have you then and there this writ.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States, this second day of July, A. D. 1866, and in the ninetieth year of the independence of the United States of America.

[SEAL.] F. W. GREEN, *Clerk.*

*Endorsement on summons.*

And on the back of said writ was the following endorsement, to wit:

Suit brought on def'ts' bond to plaintiff in $20,000, dated April 9, 1861, and conditioned for the true and faithful execution and discharge by def't Ballard, of all duties of his office of collector of the customs for the district of Cuyahoga and upon the breach of said condition. Sum due in equity, $1,470, and interest thereon from Jan'y 1, 1865.

J. M. ROOT,
*Att'y of U. S.*

And afterwards, to wit, on the eleventh day of July, in the year of our Lord one thousand eight hundred and sixty-six, said writ of summons was returned into said clerk's office by the marshal, with his return endorsed thereon as follows, to wit:

*Marshal's return.*

3 NORTHERN DISTRICT OF OHIO, *ss:*

On the 3rd day of July, 1866, I made due service of this writ upon the within-named Chas. J. Ballard, Wellington P. Cooke, and David B. Sexton, at Cleveland, in said district, by delivering to each of them a true and duly-certified copy thereof. Joseph Lyman not found in my district, and has no residence therein.

EARL BILL,
*U. S. Marshal,*
By C. H. BILL, *Deputy.*

*Leave to file declaration.*

And afterwards, to wit, at the September term of said court, A. D. 1866, on the 5th day of September, A. D. 1866, on motion of the district attorney, he has leave to file a declaration herein by the tenth instant.

And thereupon, afterwards, to wit, on the 7th day of September, A. D. 1866, the following declaration was duly filed herein in said clerk's office, which is in the words and figures following, to wit:

*Declaration.*

Circuit court of the United States of America, sixth circuit, & northern district of Ohio.

THE UNITED STATES OF AMERICA
*vs.*
CHARLES J. BALLARD, WELLINGTON P. Cooke, David B. Sexton, impleaded, &c.

Charles J. Ballard, Wellington P. Cooke, David B. Sexton, & Joseph

Lyman were summoned to answer unto the United States of America, in a plea of debt, that they render unto the plaintiff the sum of twenty thousand dollars, which they owe to, and unjustly detain from, the plaintiff, (the summons having been returned in said case as to the said Joseph Lyman, that he was not found.)

And thereupon the said plaintiff, by Moses Kelley, its attorney, complains of the said defendants, who are citizens of the State of Ohio & residents of the northern district of Ohio, for that whereas the said defendants, with the said Joseph Lyman, heretofore, to wit, on the ninth day of April, in the year of our Lord one thousand eight hundred and sixty one, at the northern district of Ohio aforesaid, by their certain writing obligatory of said date, and now to the court here shown, which said writing obligatory is sealed with the seals and signed by the
4 hands of the said defendants & the said Joseph Lyman, acknowledged themselves to be held & firmly bound unto the United States of America, jointly & severally, in the sum of twenty thousand dollars, to the payment of which sum to the plaintiff, the said defendants, & the said Joseph Lyman, therein & thereby, then & there, jointly & severally, bound themselves, their heirs, & executors, & administrators, which writing obligatory is and was subject to a condition thereunto written, whereby, after reciting that the said Charles J. Ballard had been, by the President of the United States, pursuant to law, appointed to the office of the collector of the customs for the district of Cuyahoga, in the State of Ohio, it is provided that if the said Charles J. Ballard had truly and faithfully executed and discharged, & should continue to truly & faithfully execute & discharge all the duties of the said office according to law, the said obligation was to be void and of none effect; otherwise to abide & remain in full force and virtue.

And the said plaintiff avers that thereupon the said Charles J. Ballard, then and there, in due form of law, took & subscribed, & there was administered to him, his oath of office, as collector of customs for the district aforesaid, which said oath was then and there endorsed upon said writing obligatory. & afterwards, to wit, *in* the twelfth day of April, in the year aforesaid, at the city of Washington, to wit, at said northern district of Ohio, the said writing obligatory was in due form of law approved, by & on behalf of said plaintiff, which said approval was also endorsed upon said writing obligatory & that the said Charles J. Ballard, on the day and year last aforesaid, at the northern district of Ohio aforesaid, entered upon the duties of the office of collector of customs for the district of Cuyahoga aforesaid, and from thence until
5 the thirty-first day of March, in the year one thousand eight hundred and sixty-five, within the said northern district of Ohio aforesaid, the said Charles J. Ballard did hold and execute the office of collector of the customs for the district of Cuyahoga aforesaid.

And the said plaintiff avers that, after the execution of the said writing obligatory aforesaid, & while so holding and exercising the said office of the collector of the customs for the district of Cuyahoga aforesaid, the said Charles J. Ballard, as such collector of the customs aforesaid, at the northern district of Ohio aforesaid, did, during the third quarter of the year one thousand eight hundred and sixty-five, beginning on the first day of July of said year & ending on the thirtieth day of September of said year, demand, receive, and collect according to law, from the owner & owners of steamboats within said district of Cuyahoga, as compensation for inspections and examinations made for said year last aforesaid, above & in addition to the fees allowed by law for issuing enrolments & licenses, a large sum of money, to wit, the

sum five hundred & sixty dollars, and the plaintiff says that it then and there, to wit, on the first day of October, in the year one thousand eight hundred and sixty-four, at said northern district of Ohio, became & was the duty of the said Charles J. Ballard to pay over to the plaintiff said sum of money so received and collected by him as aforesaid. Yet the said Charles J. Ballard, although on said first day of October, one thousand eight hundred and sixty-five, at said northern district aforesaid, he had & held the money so received and collected by him as aforesaid, has not at any time paid the same over to the plaintiff, but so to do has hitherto wholly neglected & refused, & still does neglect & refuse.

And the said plaintiff, for assigning a further breach of said writing obligatory, says that after the execution of said writing obligatory as aforesaid, & whilst the said Charles J. Ballard was so holding
6 and exercising the office of the collector of the customs for the district of Cuyahoga aforesaid, & during said third quarter of the year one thousand eight hundred and sixty five, beginning in said first day of July of said year, and ending on the thirtieth day of September of said year, at said northern district of Ohio, as such collector, the said Charles J. Ballard, collected & received, & there was paid over to him as such collector, according to law, for the certificates of engineers & pilots, by the inspectors for and within said district of Cuyahoga, large sums of money, to wit, the sum of four hundred & eighty dollars. And the said plaintiff says that it then & there, to wit, at the said northern district of Ohio, on the first day of October, in the year one thousand eight hundred and sixty-five, became & was the duty of the said Charles J. Ballard, as such collector, to pay over the said sum of money last mentioned, so collected & received by him as last aforesaid, to the plaintiff. Yet the said Charles J. Ballard, although on said first day of October, one thousand eight hundred and sixty-five, he had & held said money so collected & received by him, has not at any time paid over to the plaintiff said money, but so to do has hitherto wholly neglected & refused, & still does neglect & refuse.

And the said plaintiff, for assigning a further breach of said writing obligatory, says that after the execution of the same as aforesaid, & whilst the said Charles J. Ballard was so holding & exercising the office of the collector of the customs for the said district of Cuyahoga aforesaid, & during the fourth quarter of the year one thousand eight hundred and sixty-five, beginning on the first day of October in said year, and ending on the thirty-first day of December of said year, at said northern district of Ohio, the said Charles J. Ballard, as such
7 collector, demanded & received & collected according to law, from the owner & owners of steamboats, within said district of Cuyahoga, as compensation for inspections & examinations made for said year last aforesaid, above & in addition to the fees allowed by law for issuing enrolments & licenses, a large sum of money, to wit, the sum of seventy dollars, & the *the* plaintiff says that it then & there, to wit, on the first day of January, in the year one thousand eight hundred & sixty-five, became & was the duty of the said Charles J. Ballard to pay over to the plaintiff said sum of money, to wit, at the northern district of Ohio aforesaid. Yet the said Charles J. Ballard, although on said first day of January, one thousand eight hundred and sixty-five, he had & held said money so collected & received by him as such collector, as aforesaid, has not at any time paid over to the plaintiff said sum of money so collected & received by him, but so to do has hitherto wholly neglected & refused, & still does neglect & refuse.

And the said plaintiff, for assigning a further breach of said writing obligatory, says that after the execution of the same, as aforesaid, & whilst the said Charles J. Ballard was exercising and holding the office of the collector of the customs of the said district of Cuyahoga aforesaid, and during the fourth quarter of the year one thousand eight hundred and sixty-five, beginning on the first day of October of said year, & ending on the thirty-first day of December of said year, at said northern district of Ohio, the said Charles J. Ballard, as such collector, demanded, received, collected, and there was paid over to him as such collector, according to law, for the certificates of engineers & pilots, by inspectors for & within said district, a large sum of money, to wit, the sum of three hundred and sixty dollars. And the
8 plaintiff says that it then & there, to wit, at said northern district of Ohio, on the first day of January, in the year one thousand eight hundred & sixty-five, became & was the duty of the said Charles J. Ballard, as such collector, to pay over to the plaintiff said sum of money so collected & received by him from the source last aforesaid. Yet the said Charles J. Ballard, although on said first day of January, one thousand eight hundred and sixty-five, he had & held the said money so collected & received by him as last aforesaid, has not at any time paid over the same to the plaintiff, but so to do hath hitherto wholly neglected & refused, and still does neglect & refuse.

And the said defendants, although so often requested so to do, have not, nor has the said Joseph Lyman, paid the said sum of money above demanded, but to pay the same, or any part thereof, have hitherto wholly neglected & refused, & still do neglect & refuse, to the damage of the plaintiff, in the sum of two thousand dollars.

And, therefore, the said plaintiff brings its suit.

MOSES KELLEY,
*U. S. Attorney.*

*Continued.*

And afterwards, to wit, at the September term, A. D. one thousand eight hundred and sixty-six, of said court, this cause is continued to the next term of this court.

And afterwards, to wit, on the twelfth day of January, one thousand eight hundred and sixty-seven, came the defendants and filed in the clerk's office of said court their plea, in the words and figures following, to wit:

*Pleas.*

In the circuit court United States of America, northern district of Ohio.

CHARLES J. BALLARD & OTHERS *ads.* THE UNITED STATES OF AMERICA. } In debt.

And the said defendants, Charles J. Ballard, Wellington P. Cooke, and David B. Sexton, impleaded with Joseph Lyman, by Ramsey & Bolton and S. J. Andrews, their attorneys, come & defend the wrong and injury, when, &c., and say that they do not owe the said
9 plaintiff the said sums of money above demanded, or either of them, or any part thereof, in manner and form as the said plaint-

iff hath above complained against them. And of this they put themselves upon the country.

And, for a further plea in this behalf, the defendants, by leave of the court, first had and obtained, say, as to the several counts in said declaration contained, and the breaches therein assigned, that the plaintiff ought not, by reason of anything therein alleged, to have or maintain its aforesaid action against the said defendants.

And they say that, by an act of the Congress of the United States of America, passed June 17th A. D., 1864, entitled "An act to regulate the foreign and coasting trade in the northern, northeastern, and northwestern part of the United States, and for other purposes," the said Charles J. Ballard became and was entitled, as collector of the said district of Cuyahoga, to receive for his services an annual compensation of one thousand dollars, and, in addition thereto, the fees then collected under the general regulations of the Treasury Department of February, A. D. 1857, and a commission of three per centum on all moneys by him collected and accounted for to the plaintiff: provided, however, that the compensation derived from said salary, commissions, and fees should not exceed, in the aggregate, twenty-five hundred dollars. And they say that the said fees for examinations, inspections, and certificates of engineers and pilots in said declaration mentioned, were fees which, at the time of passing said act, were collected under the said general regulations of the Treasury Department of February, A. D. 1857.

They further say that the said Charles J. Ballard, as collector, as aforesaid, received, from July 1st, 1864, to March 31st, 1865, inclusive, for salary, seven hundred and fifty dollars; for fees, including the fees mentioned in the plaintiff's declaration, nineteen hundred and sixty-seven dollars and seventy cents; and for commissions upon money received by him during that period, and accounted for to the plaintiff, six hundred and twenty-eight dollars and forty-nine cents, making an aggregate of three thousand three hundred and forty-six dollars and nineteen cents; that out of said moneys so received by him, as aforesaid, he paid for clerk hire, stationery, and other official expenses, by authority of the plaintiff, one thousand and twenty-three dollars and forty cents, leaving a balance in his hands of two thousand three hundred and twenty-two dollars and seventy-nine cents.

That said Charles J. Ballard, in adjusting said account with the plaintiff, had a lawful right to retain, and did retain, out of the moneys received by him, as aforesaid, for his compensation as collector, as aforesaid, for the three quarters of the year ending March 31st, 1865, eighteen hundred and seventy-five dollars; and that, before the commencement of this suit, to wit, on the fifth day of January, A. D. 1866, at Cleveland, within the northern district of Ohio, he paid the balance, amounting to four hundred and forty-seven dollars and seventy-nine cents, to the plaintiff; and this he is ready to verify.

Wherefore they pray judgment whether the plaintiff ought to have or maintain its aforesaid action thereof against him.

RAMSEY & BOLTON,
S. J. ANDREWS,
*Def't's Att'ys.*

*Continued.*

And afterwards, to wit, at the January term of said court, to wit, in the year of our Lord one thousand eight hundred and sixty-seven, this cause is continued to the next term of this court.

11 *Continued.*

And afterward, to wit, at the May term, to wit, in the year of our Lord one thousand eight hundred and sixty-seven, this cause is continued to the next term of this court.

*Continued.*

And afterwards, to wit, at the September term, to wit, in the year of our Lord one thousand eight hundred and sixty-seven, this cause is continued to the next term.

And afterwards, to wit, on the twentieth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, came the district attorney, and filed his similiter & demurrer to defendant's pleas, which is in the words and figures following, to wit:

*Similiter & demurrer.*

Circuit court of the United States, northern district of Ohio.

THE UNITED STATES OF AMERICA
*vs.*
CHARLES J. BALLARD ET ALS. } In debt.

And the said plaintiff, as to the plea of the defendants, by them above pleaded, & whereof they put themselves upon the country, doth the like.

And the said plaintiff, as to the said plea of the defendants, by them secondly above pleaded, saith that the same and the matters therein contained, in manner & form as the same are above pleaded and set forth are not sufficient in law to bar or preclude the said plaintiff from having or maintaining the aforesaid action thereof against them, the said defendants, and that the said plaintiff is not bound by law to answer the same.

Wherefore for want of a sufficient plea in this behalf, the said plaintiff prays judgment, and its debt aforesaid, together with its damages by it sustained, on occasion of the detention thereof, to be adjudged to it, &c.

By F. J. DICKMAN,
*United States Attorney.*

And afterwards, to wit, on the twentieth day of February, A. D. one thousand eight hundred and sixty-eight, came the said defendants, by their attorneys, and filed their defendants' joinder in demurrer,
12 which is in the words and figures following, to wit:

*Def'ts' joinder in demurrer.*

United States circuit court, northern district of Ohio.

CHARLES J. BALLARD ET AL.
*ads.*
THE UNITED STATES OF AMERICA. } In debt.

And the said defendants now come and say that the said plea by them secondly above pleaded, is sufficient in law.

By their attorneys.

*Hearing on pl'ffs' dem'r.*

And afterwards, to wit, at the January term of said court, to wit, on the twenty-eighth day of February, in the year of our Lord one thousand eight hundred and sixty-eight, came the district attorney, on behalf of the United States, and also the said defendants, by their attorneys.

And this cause coming on to be heard upon the demurrer of the said plaintiffs to the pleas of the said defendants, was argued by counsel, and the court being fully advised in the premises are of opinion that the said pleas, and the matters therein contained, are sufficient in law to bar the said plaintiffs from their action against the said defendants, and that the said defendants do not owe to the said plaintiffs the said sum or sums of money demanded by them, or any part thereof, in manner and form as they have complained against them.

*Judgment.*

Wherefore it is considered that the said defendants go hence thereof without day.

13 THE UNITED STATES OF AMERICA,
*Northern District of Ohio, ss:*

It is hereby certified that the foregoing is truly taken and copied from the record of the proceedings of the circuit court of the United States for the northern district of Ohio, aforesaid.

Witness my official signature, and the seal of said court, at the city of Cleveland, in said district, this 3rd day of August, A. D. 1870.

EARL BILL,
*Clerk of said Circuit Court.*

14 Supreme Court of the United States.

UNITED STATES OF AMERICA *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the seventh circuit and northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you, between the United States of America, plaintiff, and Charles J. Ballard, Joseph Lyman, Wellington P. Cooke & David B. Sexton, defendants, a manifest error hath happened to the great damage of the said plaintiff, as by its complaint appears; and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at the city of Washington on the first Monday in the month of December next in the said Supreme Court then and there to be held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct the error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2d day of August, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the 95th.

Attest:

[SEAL.] EARL BILL, *Clerk.*

15 (Indorsed:) The United States vs. Charles J. Ballard et al. Writ of error. Geo. Willey, U. S. att'y.

NORTHERN DISTRICT OF OHIO, *ss:*

The execution of the within writ will duly appear from the citation in error issued herein with return of service of the same endorsed thereon, the authenticated transcript of the record of the judgment therein mentioned, and the assignment of errors thereupon by the said plaintiff in error; also the copy of said writ of error lodged in the clerk's office of the court wherein said record remains, for said defendants in error, on the 2nd day of August, 1870; all which are annexed to said writ and returned therewith.

August 18th, 1870.

EARL BILL,
*Clerk of the Circuit Court of the U. S. for said District.*

16 Supreme Court of the United States.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the seventh circuit and northern district of Ohio, greeting:

Because in the record and proceedings, and also in the rendition of a judgment in a plea which is in the said circuit court before you, between the United States of America, plaintiff, and Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, & David B. Sexton, defendants, a manifest error hath happened, to the great damage of the said plaintiff, as by its complaint appears, and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States together with this writ, so that you have the same at the city of Washing, on the first Monday in the month of December next, in the said Supreme Court then and there to be held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Honorable Salmon P. Chase, Chief Justice of the said Supreme Court of the United States, this 2d day of August, in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the 95th.

Attest:

[SEAL.] EARL BILL, *Clerk.*

17 (Indorsed:) The United States vs. Charles J. Ballard et al. Writ of error. Filed August 2, 1870. Earl Bill, Clerk. Copy. George Willey, U. S. att'y.

THE UNITED STATES
*vs.*
CHARLES J. BALLARD ET AL.

Copy of a writ of error, lodged in pursuance of the statute of the United States in such case made & provided, for the above named Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, & David B. Sexton, defendants in error.

GEO. WILLEY,
*Attorney for Plaintiff in Error.*

18 THE UNITED STATES OF AMERICA,
*Supreme Court of the United States:*

To Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, & David B. Sexton, greeting:

Whereas the United States of America obtained the allowance of our writ of error to the circuit court of the United States within and for the northern district of Ohio directed, to remove into the said Supreme Court, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment in an action of debt, wherein you the said Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, & David B. Sexton, defendants, in that action lately recovered against the said United States of America, as by the said record in the said circuit court now remaining appears, in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened, as by the said United States of America we are informed, and our said writ of error granted, issued, and allowed as aforesaid, for the purpose of correcting the errors aforesaid alledged, if any there be: You are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States of America, this 2d day of August in the year of our Lord one thousand eight hundred and seventy, and of the independence of the United States of America the 95th.

[SEAL.] C. T. SHERMAN,
*U. S. District Judge, & one of the Judges of said Circuit Court.*

19 (Indorsed:) 448. The United States vs. Charles J. Ballard et als. Citation in error. Returned & filed Aug. 15th, 1870. Earl Bill, clerk. Geo. Willey, U. S. att'y.

NORTHERN DISTRICT OF OHIO, *ss:*

On the 5th day of August, A. D. 1870, I delivered to the within-named Wellington P. Cooke, at Cleveland, Ohio, a true copy of this writ duly certified; I also, on the 13th day of August A. D. 1870, delivered to S. J. Andrews, att'y for the within-named Charles J. Ballard, Joseph

Lyman, & David B. Sexton, a true copy of this writ duly certified, at Cleveland, Ohio.

R. HASTINGS, *U. S. Marshal*,
By E. A. ABBOTT, *Dep.*

Service $4 00.

20 Supreme Court of the United States, of the December term, in the year of our Lord eighteen hundred and seventy.

THE UNITED STATES
*vs.*
CHARLES J. BALLARD, JOSEPH LYMAN, WELLINGTON P. COOKE, & DAVID B. SEXTON. } In error.

And now comes the said United States, by George Willey its attorney, and says that in the record and proceedings of the above-entitled cause there is manifest error, in this, to wit, that the pleas of said defendants, and the matters therein contained, are not sufficient in law to bar the said plaintiff from its action against the said defendants.

There is also error in this, to wit, that by the record aforesaid it appears that the judgment given was given for the said Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, and David B. Sexton, defendants, against the said United States, whereas by the law of the land the said judgment ought to have been given for the said United States
21 against the said Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, and David B. Sexton.

And the said United States prays that the judgment aforesaid may be reversed, annulled, and altogether held for nothing, and that it may be restored to all things which it has lost by occasion of the said judgment.

GEO. WILLEY,
*Attorney of the United States for the Northern District of Ohio.*

(Indorsed:) In the Supreme Court of the United States. In error. The United States vs. Charles J. Ballard et al. Assignment of errors.

(Indorsement on cover:) No. 328. The United States, plaintiffs in error, vs. Charles J. Ballard, Joseph Lyman, Wellington P. Cooke, & David B. Sexton. N. Ohio C. C. U. S. Filed 5th December, 1870. No. 1576. The United States of America vs. Charles J. Ballard et al. Exemplification of record.

# In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Plaintiff in Error*,
*vs.*
CHARLES J. BALLARD, JOSEPH LYMAN, WELLINGTON P. COOKE, and DAVID SEXTON. } No. 129.

*In error to the Circuit Court of the United States for the Northern District of Ohio.*

BRIEF FOR THE UNITED STATES.

# In the Supreme Court of the United States.

DECEMBER TERM, 1871.

THE UNITED STATES, *Plaintiff in Error*,
*vs.*
CHARLES J. BALLARD, JOSEPH LYMAN, WELLINGTON P. COOKE, and DAVID SEXTON. } No. 129.

*In error to the Circuit Court of the United States for the Northern District of Ohio.*

BRIEF FOR THE UNITED STATES.

The United States brought an action of debt against Charles J. Ballard and his sureties on his official bond as collector of customs for the District of Cuyahoga.

The breach assigned is the refusal of said collector to pay over to the plaintiff the amount of certain sums of money received from the owners of steamboats, as compensation for inspections and examinations, and from engineers and pilots for certificates granted them by the inspector.

The defendants filed two pleas, viz:

*First. Nil debet*, concluding to the country.

*Second.* A special plea, concluding with a verification.

Upon the first plea issue was joined; to the second, plaintiff filed a general demurrer, and the defendants their joinder therein.

The circuit court overruled the demurrer, and thereupon, without disposing of the issue to the country, rendered judgment for the defendants.

The order of the court overruling the demurrer treats it as a demurrer to both pleas, but this is obviously a mistake, since the similiter to the first plea precedes the demurrer, which, in terms, applies only to the second. The judgment, however, extends to the whole case, and is final.

It is submitted that the circuit court erred—

*First.* In overruling the demurrer to the second plea.

*Second.* In rendering final judgments for defendants on the pleadings.

## I.

The question of law arising on the demurrer to the second plea is, whether or not the collector for the district of Cuyahoga was entitled to retain for his own use, without paying the same into the Treasury, the moneys received by him from the owners of steamers, and from engineers and pilots, under and by virtue of the thirty-first section of the act of August 30, 1852, (10th Statutes at Large, 73.)

That section is in these words:

"That before issuing the annual license to any such steamer, the collector or other chief officer of the cus-

toms for the port or district, shall demand and receive from the owner or owners of the steamer, *as a compensation for the inspections and examinations made for the year*, the following sums, in addition to the fees for issuing enrolments and licenses now allowed by law, according to the tonnage of the vessel, to wit: For each vessel of a thousand tons and over, thirty-five dollars; for each of five hundred tons and over, but less than one thousand tons, thirty dollars; and for each under five hundred tons, and over one hundred and twenty-five tons, twenty-five dollars; and for each under one hundred and twenty-five tons, twenty dollars, at the time of obtaining registry, and once in each year thereafter, pay, according to the rate of tonnage before mentioned, the sum of money herein fixed. And each engineer and pilot, licensed as herein provided, shall pay *for the first certificate granted by any inspector or inspectors* the sum of five dollars, and for each subsequent certificate one dollar *to such inspector or inspectors*, to be accounted for and paid over to the collector or other chief officer of the customs; *and the sums derived from all the sources above specified shall be quarterly accounted for and paid over to the United States in the same manner as other revenue.*"

Section 18 of the same act provides for the appointment of nine (9) supervising inspectors, prescribes their duties, and fixes their compensation.

Section 9 provides for the appointment of local inspectors for various districts, including Cleveland, and prescribes their duties.

Section 33 fixes the amount of their compensation, "to be paid under the direction of the Secretary of the Treasury in the manner officers of the revenue are paid."

The sums required to be paid by the owners of steam-

boats, "for inspections and examinations made for the year, * * in addition to the fees for issuing enrolments and licenses," are, by the terms of section 31, declared to be as compensation for such inspections and examinations. The sums to be paid by engineers and pilots for the first certificates granted by any inspector or inspectors, * * and for each subsequent certificate, are likewise paid for the services of local inspectors.

All the inspections, examinations, and certificates required by section 31 are made and granted by the local inspectors. It is no part of the duty of the collector to perform either of said acts; and it would, therefore, seem clear, from the language of this section, that such sums are not appropriated for the use of collectors, but are required to be paid as compensation for the services of the local inspectors. It is true the compensation of local inspectors is limited by section 33, and is to be paid to them out of the Treasury as other salaries; but these payments are required by statute for the purpose of creating a fund out of which such salaries are to be paid, or, in other words, to reimburse the Government for salaries paid to inspectors on account of their services for making inspections and examinations and issuing certificates. And it can make no difference that the total amount of money collected in any given district may fall below or may exceed the salary fixed by law for the inspectors of such district. The compensation of inspectors provided for in section 33 of the act appears to have been fixed upon the

basis of the probable number of examinations and inspections to be made and certificates to be granted in each of the enumerated districts, and it was supposed that the total amount of money thus raised would approximately equal the aggregate compensation of all the inspectors.

But the language of the last clause of section 31 is controlling and conclusive upon this question. All the sums authorized to be collected by that section are required "to be accounted for and paid over to the United States in the same manner as other *revenue*." This language of the statute leaves no room to doubt that the collections authorized and required by section 31 are to be treated as revenue which must be paid into the Treasury, and precludes the idea that any collector may appropriate the same to his own use.

But the defendant in this case claimed that he was entitled to retain such moneys under and by virtue of the second section of the act of June 17, 1864. That section is as follows:

"That in lieu of the compensation provided by the fourth section of the act of March second, eighteen hundred and thirty-one, entitled 'An act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes,' each of the several collectors of customs in the following districts on the said frontiers, to wit: Pembina, Chicago, Milwaukee, Sault Saint Marie, Detroit, Miami, Sandusky, Cuyahoga, Presque Isle, (hereafter to be called Erie,) Dunkirk, Buffalo, Niagara, Genesee, Oswego, Cape Vincent, Oswegatchie, Cham-

plain, and Vermont, shall receive an annual compensation of one thousand dollars, and, in addition thereto, the fees now collected under the general regulations of the Treasury Department of February, eighteen hundred and fifty-seven, and a commission of three per centum on all moneys collected and accounted for by them respectively: *Provided*, That the aggregate compensation derived from salary, fees, and commissions, shall not in any case exceed the sum of twenty-five hundred dollars per annum, subject to the provisions of the act entitled 'An act relative to collectors and other officers of the customs,' approved February eleventh, eighteen hundred and forty-six.' And whenever the aggregate of salary, fees, and commissions shall in any case exceed the said sum of twenty-five hundred dollars, after deducting the necessary expenses incident to the said office, for and during the same period for which said compensation is allowed, the excess shall, in every such case, be paid into the Treasury of the United States. The fees and emoluments of all kinds to be accounted for as provided by the twelfth section of the act of the seventh of May, eighteen hundred and twenty-two."

The claim of the collector in this case is based upon the clause of the foregoing section, which provides that collectors of customs in the enumerated districts shall have, in addition to an annual compensation of one thousand dollars, ($1,000,) "the fees now collected under the general regulations of the Treasury Department of February, 1857."

So much of the said regulations as relates to this subject is to be found in articles 593 and 594 of the "regulations under the revenue laws," promulgated from the Treasury Department on the first day of February,

1857, pages 326—330, both inclusive. Those articles are, as follows:

"593. The following is the list of fees required by law to be paid at the several custom-houses, and no other fees shall be received than those here specially enumerated:

| | |
|---|---|
| For admeasuring every vessel, in order to the enrolment or licensing, and recording the same, if of 5 tons and less than 20 | $0 50 |
| Of 20 and not over 70 | 75 |
| Over 70 and not over 100 | 1 00 |
| Over 100 tons | 1 50 |
| For certificate of enrolment | 50 |
| Endorsement on certificate of enrolment | 20 |
| License, and granting the same, including bond, if not over 20 tons | 25 |
| Above 20 and not over 100 | 50 |
| Over 100 tons | 1 00 |
| Endorsement on a license | 20 |
| Certifying manifest, and granting permit for licensed vessels to go from district to district, under 50 tons | 25 |
| Over 50 tons | 50 |
| Receiving certified manifest, and granting permit on arrival of such vessel, if under 50 tons | 25 |
| Over 50 tons | 50 |
| For certifying manifest, and granting permission to registered vessels to go from district to district | 1 50 |
| Receiving certified manifest, and granting permit on arrival of such registered vessel | 1 50 |

| | |
|---|---|
| Granting permit to a vessel, not belonging to a citizen of the United States, to go from district to district, and receiving manifest | $2 00 |
| Receiving manifest and granting permit to unload for last-mentioned vessel, on arrival at one district from another | 2 00 |
| Granting permit for vessel carrying on fishery to trade at a foreign port | 25 |
| Report and entry of foreign goods imported in such vessel. | 25 |
| Entry of vessel of 100 tons and more | 2 50 |
| Clearance of vessel of 100 tons and more | 2 50 |
| Entry of vessel under 100 tons | 1 50 |
| Clearance of vessel under 100 tons | 1 50 |
| Post entry | 2 00 |
| Permit to land or deliver goods | 20 |
| Bond taken officially | 40 |
| Permit to load goods for exportation entitled to drawback | 30 |
| Debenture or other official certificate | 20 |
| Bill of health | 20 |
| Official documents, except register, required by any merchant, owner, or master of any vessel, not before enumerated | 20 |
| Admeasurement, and certifying vessels of 100 tons and under | 1 cent per ton. |
| Over 100 and not over 200 | 1 50 |
| Over 200 | 2 00 |
| Other services to be performed by the surveyor, in vessels of 100 tons and more, having on board merchandise subject to duty | 3 00 |
| For like services in vessels under 100 tons, having similar merchandise | 1 50 |

| | |
|---|---|
| All vessels not having merchandise subject to duty | $0 66⅔ |
| Protection | 25 |
| Crew list | 25 |
| Certificate of registry and bond | 2 25 |
| Endorsement on register | 1 00 |
| General permit to ship, to land passengers' baggage | 20 |

Weighing: 1⅛ cent per 112 pounds
Gauging: casks, 12 cents each; cases and baskets, 4½ cents each. Ale, porter, &c., 1½ cent per dozen bottles. Measuring: coal, 90 cents per 100 bushels; chalk, brimstone, &c., 90 cents per 100 bushels; salt, 75 cents per 100 bushels; potatoes, seeds, grain, and all other measurable articles, 45 cents per 100 bushels. Marble, mahogany, cedar wood, &c., the actual expense incurred.

When invoice does not contain the weight, measure, or gauge of merchandise required to be weighed, measured, or gauged, and when goods are withdrawn from warehouse in less quantity than the entire importation, as per article 541 of these regulations.

For licenses to steamers, *as a compensation for the inspections and examinations made for the year, under the steamboat law, approved August* 30, 1852, in addition to the fees above mentioned for issuing enrolments and licenses to vessels:

| | |
|---|---|
| For each vessel of 1,000 tons and over | $35 00 |
| For each of 500 tons and over, but less than 1,000 | 30 00 |
| For each under 500 tons and over 125 tons | 25 00 |
| For each under 125 tons | 20 00 |
| For the first certificate granted by any inspector or inspectors to each engineer and pilot | 5 00 |
| For each subsequent certificate | 1 00 |

| | |
|---|---|
| For recording all bills of sale, mortgages, hypothecations, or conveyance of vessels, under act of July 29, 1850..... | $0 50 |
| For recording all certificates for discharging and cancelling any such conveyances..... | 50 |
| For furnishing a certificate setting forth the names of the owners of any registered or enrolled vessel, the parts or proportions owned by each, and also the material facts of any existing bill of sale, mortgage, hypothecation, or other incumbrance, the date, amount of such incumbrance, and from and to whom made..... | 1 00 |
| For furnishing copies of such record for each bill of sale, mortgage, or other conveyance.. | 50 |

"The term 'or other official certificate' will embrace every certificate requiring the collector's official signature in the regular transaction of the business of the custom-house, including his certificate to an oath or invoice.

"The term 'permit to land goods' is intended to include all permits to land, whether for immediate delivery or otherwise; all permits to warehouse or public store, or delivery therefrom; all permits to transfer goods from one store to another when required by owner or importer; and all permits or orders to appraise without invoice.

"The term 'permit for exportation' is intended to apply to all permits for export or transport from vessel or warehouse.

"594. It has been decided by the Treasury Department that the provisions of the act of 2d March 1831, regulating the *foreign and coasting trade on the northern, northeastern, and northwestern frontiers* of the United States, in dispensing with the charges of custom-house fees, extends no further than to fees charged on *rafts*, *flats*, *boats*, or *vessels* of the United States, or British

colonies, entering otherwise than by sea at any port of the United States on the rivers and lakes on the said frontier.

"The following enumerated fees are still to be charged and collected at such ports, *and accounted for and paid over to the United States by collectors in the same manner as other revenue:*

| | |
|---|---|
| For admeasuring every vessel in order to the enrolment or licensing and recording the same: | |
| If of 5 tons and less than 20 | $0 50 |
| Of over 20 and not over 70 | 1 00 |
| Over 70 and not over 100 | 1 50 |
| For certificate of enrolment | 50 |
| For endorsement on certificate of enrolment | 20 |
| For license, and granting the same, including the bond: | |
| If not over 20 tons | 25 |
| Above 20 and not over 100 | 50 |
| Over 100 tons | 1 00 |
| For endorsement on a license | 20 |
| For permit to land goods | 20 |
| For licenses to steamers, *as a compensation for the inspections and examinations made for the year under the steamboat law, approved August* 30, 1852, in addition to the fees above-mentioned, for issuing enrolments and licenses to vessels: | |
| For each vessel of 1,000 tons and over | 35 00 |
| For each of 500 and over, but less than 1,000 tons | 30 00 |
| For each under 500 and over 125 tons | 25 00 |
| For each under 125 tons | 20 00 |
| For the first certificate granted by an inspector or inspectors to each engineer and pilot | 5 00 |
| For each subsequent certificate | 1 00 |

| | |
|---|---|
| For recording all bills of sale, mortgages, hypothecations, or conveyance of vessels, under act of July 29, 1850..... | $0 50 |
| For recording all certificates for discharging and cancelling any such conveyances. | 50 |
| For furnishing a certificate setting forth the names of the owners of any registered or enrolled vessel, the parts or proportions owned by each, and also the material fact of any existing bill of sale, mortgage, hypothecation, or other incumbrance, the date, amount of such incumbrance, and from and to whom made ..... | 1 00 |
| For furnishing copies of such records for each bill of sale, mortgage, or other conveyance ..... ..... | 50" |

The obvious purpose of these regulations, so far as they relate to this subject, was to call the attention of collectors and other officers of customs to the precise amount of fees and other moneys which they were authorized to collect under the then existing acts of Congress. This was found to be a convenient mode of advising the officers as to their respective duties under the law.

It will be observed, that in article 593 the sums to be collected for licenses to steamers are set down "as a compensation for the inspections and examinations made for the year," under the act of August 30, 1852, in addition to *fees* thereinbefore mentioned for issuing enrolments and licenses to vessels.

And in article 594 the said sums and the amounts to

be charged and collected for certificates granted to engineers and pilots are specifically mentioned as moneys to be *accounted for and paid over to the United States by collectors in the same manner as other revenue.*

Thus, there is clearly kept up in these regulations the distinction between the moneys collected under the thirty-first section of the act of August 30, 1852, (*ubi supra*,) and other collections enumerated in the regulations.

It is not claimed by the Government that the collector in this case has retained more than the maximum compensation allowed by the second section of the act of June 17, 1864, but it is insisted that the amount thus retained by him is made up partly from moneys which he was not entitled to appropriate to his own use.

He does not pretend to have derived any right to such moneys from the Treasury regulations or from any prior statute, but rests his claim solely upon the second section of the act of 1864, and insists that, under that section, he is entitled to appropriate to his own use certain moneys which by prior statute and the Treasury regulations were specifically required to be paid into the Treasury as other revenue, and were clearly appropriated to other uses.

What is there in the language of the act of 1864 to indicate an intention on the part of Congress to repeal the plain provision of the act of 1852 in this respect? It cannot be claimed that so much of section 31 of the act of 1852 as appropriates the moneys in question to another use, and requires them to be paid into the Treas-

ury as other revenue, is repealed otherwise than by implication. The act of 1852 is not referred to in the act of 1864, and there is nothing in the statute itself to indicate that the subject-matter of section 31 of the former act was present in the mind of the legislature when the latter was adopted. Nor is the latter in any sense repugnant to the former. Section 31 of the act of 1852 relates exclusively to the payment by owners of steamers, engineers, and pilots, of certain sums of money as compensation for the services of inspectors, and the only connection of collectors therewith is in the duty imposed upon them to receive the money and pay it into the Treasury as other revenue. Section 2 of the act of 1864 relates exclusively to the compensation of collectors, and the chief purpose in view, undoubtedly, was to change the maximum compensation of collectors of the enumerated districts. Full effect can be given the latter without in any respect disturbing the former. The two may well subsist together, and in such case repeal by implication cannot be allowed.

Henderson's Tobacco, 11 Wallace, 652.

The Distilled Spirits, *ibid.*, 356.

Dwarris on Statutes, 674, *et seq.*

The allowance of *fees* to collectors in the act of 1864 is by reference to the Treasury regulations of 1857, and in those regulations the distinction between *fees* of collectors and the moneys collected under section 31 of the act of 1852 is clearly observed.

The construction of the act of 1864, herein contended

for, is consistent with the uniform practice of the Treasury Department, and has been acquiesced in by all collectors of customs, except in the case of Collector Ballard and one other.

II.

*Nil debet* is not a sufficient plea to an action of debt on a bond setting out the condition and breach, and it may be conceded that the plaintiff below should have demurred to this plea. If the plaintiff fails to demur to such a plea, he is required to prove every allegation of his declaration, and the defendant is at liberty to avail himself of any general ground of defence, the reason for this being that the plaintiff, by his failure to demur, has waived the benefit of the estoppel which he might have upon the bond, and by accepting the plea, founded his demand solely upon the defendant's being indebted. (1 Chitty's Pleadings, 48; Gould's Pleadings, 287.) The issue having been thus framed, the court could not treat it as immaterial, and render judgment for the defendants on the whole case upon sustaining the demurrer to the last plea, but should have allowed the parties to go to the jury upon the issue joined on the first plea.

For these reasons, it is submitted that the judgment below should be reversed.

B. H. BRISTOW,
*Solicitor General.*

# Supreme Court of the United States.

## DECEMBER TERM, 1871.

THE UNITED STATES, Plaintiff in error,
vs.
C. J. BALLARD, *et. al.*
} No. 129.

*In error to the Circuit Court for the Northern Circuit of Ohio.*

DEFENDANT'S BRIEF.

A. G. RIDDLE,
*For Defendant.*

Judd & Detweiler, Printers.

# Supreme Court of the United States.

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THE UNITED STATES, Plaintiff in error,
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C. J. BALLARD, *et. al.*
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*In error to the Circuit Court for the Northern Circuit of Ohio.*

### DEFENDANT'S BRIEF.

*Statement of the case.*

The suit was against Ballard and his sureties, on his bond as collector for the district of Cuyahoga, in the State of Ohio.

The declaration, (Rec., p. 2,) assigns as follows:

1st. That Ballard, during the third quarter of 1865, received $560 under the law, from owners of steam-boats, for inspection and examination, over and above the fees allowed him by law, which he refused to pay over to the United States.

2d. That during the same quarter he received $480 for certificates of engineers and pilots, by the inspectors, which it was his duty to pay over and which he refused to do.

3d. That during the fourth quarter of said year he received $70 from the owners of steamboats for inspections

and examinations, over what he was permitted to retain, and refused to pay the same over to the plaintiff.

4th. That during the fourth quarter of said year, he received $360 for the certificates of engineers and pilots, which it was his duty to pay over, and which he refused to do, &c.

Defense, Rec., p. 5.

Plea of non-debit, and a special plea of confession and avoidence, as follows:

And they say that, by an act of the Congress of the United States of America, passed June 17, A. D. 1864, entitled "An act to regulate the foreign and coasting trade in the northern, north-eastern, and north-western part of the United States, and for other purposes," the said Charles J. Ballard became and was entitled, as collector of the said district of Cuyahoga, to receive for his services an annual compensation of one thousand dollars, and, in addition thereto, the fees then collected under the general regulations of the Treasury Department of February, A. D. 1857, and a commission of three per centum on all moneys by him collected and accounted for to the plaintiff: provided, however, that the compensation derived from said salary, commissions, and fees should not exceed, in the aggregate, twenty-five hundred dollars. And they say that the said fees for examinations, inspections, and certificates of engineers and pilots in said declaration mentioned, were fees which, at the time of passing said act, were collected under the said general regulations of the Treasury Department of February, A. D. 1857.

They further say that the said Charles J. Ballard, as collector, as aforesaid, received, from July 1, 1864, to March 31, 1865, inclusive, for salary, seven hundred and fifty dollars; for fees, including the fees mentioned in the plaintiff's declaration, nineteen hundred and sixty-seven dollars and seventy cents; and for commissions upon money received by him during that period, and accounted for to the plaintiff, six hundred and twenty-eight dollars and forty-nine cents, making an aggregate of three thousand three hundred and forty-six dollars and nineteen cents; that out of said moneys so received by him, as aforesaid, he paid for clerk hire, stationary, and other official expenses, by authority of the plaintiff, one thousand and twenty-three dollars and forty cents, leaving a balance in his hands of two thousand three hundred and twenty-two dollars and seventy-nine cents.

The said Charles J. Ballard, in adjusting said account with the plaintiff, had a lawful right to retain, and did retain, out of the moneys received by him, as aforesaid, for his compensation as collector, as aforesaid, for the three quarters of the year ending March 31, 1865, eighteen hundred and seventy-five dollars; and that, before the commencement of this suit, to wit, on the fifth day of January, A. D. 1866, at Cleveland, within the northern district of Ohio, he paid the balance, amounting to four hundred and forty-seven dollars and seventy-nine cents, to the plaintiff; and this he is ready to verify.

To this the plaintiff demurred, and the defendants joined in demurrer. (Rec., p. 7.)

On this issue judgment was rendered, sustaining the sufficiency of the special plea. (Rec. p. 8.)

This judgment the plaintiff asks may be reviewed and reversed. (See assignment of errors, Rec., p. 11.)

The plea was framed and sustained under the 2d section of the act of June 17, 1864, (13 Stats., 134,) which is as follows:

SEC. 2. *And be it further enacted*, That in lieu of the compensation provided by the fourth section of the act of March second, eighteen hundred and thirty-one, entitled "An act to regulate the foreign and coasting trade on the northern, northeastern, and northwestern frontiers of the United States, and for other purposes," each of the several collectors of customs in the following districts on the said frontiers, to wit: Pembina, Chicago, Milwaukie, Sault Sainte Marie, Detroit, Miami, Sandusky, Cuyahoga, Presque Isle, (hereafter to be called Erie,) Dunkirk, Buffalo, Niagara, Genesee, Oswego, Cape Vincent, Oswegatchie, Champlain, and Vermont, shall receive an annual compensation of one thousand dollars, and, in addition thereto, the fees now collected under the general regulations of the Treasury Department of February, eighteen hundred and fifty-seven, and a commission of three per centum on all moneys collected and accounted for by them respectively: *Provided*, That the aggregate compensation derived from salary, fees, and commissions, shall not in any case exceed the sum of twenty-five hundred dollars per annum, subject to the provisions of the act entitled "An act relative to collectors and other officers of the customs,"

approved February eleventh, eigteeen hundred and forty-six. And whenever the aggregate of salary, fees, and commissions shall in any case exceed the said sum of twenty-five hundred dollars, after deducting the necessary expenses incident to the said office, for and during the same period for which said compensation is allowed, the excess shall, in every such case, be paid into the treasury of the United States. The fees and emoluments of all kinds to be acconnted for as provided by the twelfth section of the act of seventh of May, eighteen hundred and twenty-two.

The 12th sec. of the act of May, 1822, provides that collectors, &c., shall account, under oath, for all fees and emoluments of office, and in such manner as the Secretary of the Treasury shall prescribe. (3 Stats., p. 695.)

The 4th section of the act of March 2, 1831, above referred to, provided for a fixed amount as salary for the collectors of the northwestern lakes, &c., instead of the gross amount of fees and charges, as the old law was. (4 Stats., p. 487.)

The act of February 11, 1846, provided that collectors, &c., who served for a period of less than one year should be paid *pro rata* for the time of actual service. (9 Stats., p. 3, sec. 1.)

The 594th article of the "General Regulations of February, 1857," referred to in the 2d section, above recited, and in said special plea, specifies what fees shall be charged and collected in said district of Cuyahoga; among which it declares that:

For license to steamers, as a compensation for the inspection and examinations made for them under the steamboat law, approved August 30, 1852, in addition to the fees above mentioned for issuing enrolments and licenses to vessels:

| | |
|---|---|
| For each vessel of 1,000 tons and over..... | $35 00 |
| For each vessel of 500 tons and over, but less than 1,000 tons..... | 30 00 |
| For each under 500 and over 125 tons..... | 25 00 |
| For each under 125 tons..... | 20 00 |

For the first certificate granted by an inspector to each engineer and pilot..... $5 00
For each subsequent certificate ..... 1 00
General Regulations under the Revenue Laws, p. 330.

## CONCLUSIONS.

### I.

It would seem that the facts set forth in the above plea are well pleaded.

Among them are, that for the two quarters mentioned in the declaration, the defendant, Ballard, received $3,346.19, a total of fees, and paid out, as expenses of office, &c., under said 2d section, $1,023.40, leaving in his hands $2,322.79 to be accounted for.

That there was due him at the end of the year as salary for three quarters, $1,875, under said 2d section, and that the balance, $447.79, he paid over to the plaintiff before the suit was brought.

### II.

The moneys counted upon by the plaintiff were fees under the regulations of 1857, out of which Ballard was to receive his salary of $2,500, under the 2d section of the act of June 17, 1864, quoted above, and he retained them rightfully.

It seems difficult to understand why this case was brought to this court unless the plaintiff desired to have the judgment below affirmed.

Respectfully,

A. G. RIDDLE,
*For Defendant.*